

Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

Thursday, February 16, 2023 - 12:00 to 2:00 p.m.

Attended			Not Present
Judge Keith Kelly	Rob Ence	Alan Ormsby	Judge David Connors
Judge James Brady	Wendy Fayles	Andrew Riggle	Shane Bahr
Sarah Box	Leslie Francis	Keri Sargent	Deborah Brown
Brant Christiansen	Nels Holmgren	Shonna Thomas	Katie Thomson
Tantalisa Clayton	Rachelle Johnson	Holly Thorson	James Toledo
Katie Cox	Eve Larsen	Michelle Wilkes	Todd Weiler
Rob Denton	Nan Mendenhall	Jace Willard	
Lindsay Embree	Wendy Naylor	Kaye Lynn Wootton	

Agenda			
	Topic	Presenter	Materials
12:00	Meeting begins		
	<ul style="list-style-type: none"> Housekeeping, minutes Welcome new members: <ul style="list-style-type: none"> Rachelle Johnson Dr. Lindsay Embree 	Judge Kelly	– <i>WINGS Minutes (December 2022 – draft)</i>
12:10	Project Updates		
	<ul style="list-style-type: none"> <u>Probate Subcommittee:</u> <ul style="list-style-type: none"> Staffing CJA Rule 6-501 CJA Rule 6-507 <u>Forms Updates:</u> <ul style="list-style-type: none"> Forms Committee Guardianship Forms Subgroup 	Shonna Thomas	
	<ul style="list-style-type: none"> Utah Code 75-5-303 	Shonna Thomas Brant Christensen	
12:30	WINGS Membership Updates		
	<ul style="list-style-type: none"> Long Term Care Ombudsman 	Nels Holmgren	
	<ul style="list-style-type: none"> Successor Recommendations 	Judge Kelly	
12:40	Highlight: Guardianship Signature Program		
	<ul style="list-style-type: none"> Utah State Bar – Paladin Gaps and moving forward 	Group Discussion	
1:10	New Topics		
	<ul style="list-style-type: none"> New projects for 2023 	Group Discussion	– <i>WINGS Future Projects</i>
	<ul style="list-style-type: none"> Annual planning meetings 	Judge Kelly	– <i>WINGS Bylaws</i>
1:50	Other Business		
	<ul style="list-style-type: none"> Farewell to Judge Connors 	WINGS Stakeholders	
2:00	Meeting adjourned		

Housekeeping

- Meeting began at 12:01pm.
- A motion was made to approve the minutes from the previous meeting (December 2022). The motion was seconded and approved.
- The committee welcomed new members Rachelle Johnson (Probate Clerk, 4th District) and Lindsay Embree (Neuropsychologist and Chief of the Division of Neuropsychology, University of Utah).
- Meeting adjourned at 2:01pm.

Project Updates

Probate Subcommittee

- Staffing

Several members of WINGS participate in the probate subcommittee, and many WINGS projects receive assistance from this subcommittee to implement recommendations. The probate subcommittee was originally staffed by Nancy Sylvester (Associate General Counsel). Nancy took a new position in 2020 and staffing for the subcommittee has been unclear since that time.

Staffing for this subcommittee will now be shared between the Administrative Office and the General Counsel's office, to help create consistency and promote progress. Shonna Thomas will assist with the administrative functions of the committee (e.g., agenda, materials, scheduling meetings), and Stacy Haacke (Associate General Counsel) will represent the subcommittee's work on rules through the review and approval process with other court committees. Keri Sargent (Assistant District Court Administrator) will provide support as needed.

- CJA Rule 6-501

The subcommittee worked on the final piece to this rule update, which related to the specific annual report process that corporate fiduciaries must follow. The subcommittee intends to present the final draft of the rule to the Policy, Planning, and Technology committee (PPT) in April.

Question asked:

Part of the rule requires filing a proposed Order on Review of Guardianship or Conservatorship reports ("coversheet"). Will this form be made available as an editable RTF version and what label would be used for that proposed form via e-filing?

It is common for mandated forms to have an RTF version on the website that can be edited. Also, some attorneys will take the PDF of a Judicial Council-required form and turn it into an RTF. The Clerks of Court have an internal process to track the form as an order and do not expect a Request to Submit to be filed in conjunction with this proposed order.

Decision made:

- Sarah Box and Keri Sargent will research what is needed to provide an RTF version of the new form on the court's website.

- CJA Rule 6-507

Revisions to this rule, which relates to use of Court Visitors, has been in progress for over a year. The final version was present to the PPT committee in February and approved. It will now go out for a 45-day comment period before receiving final approval.

Forms Updates

- Forms Committee

WINGS worked on 10 forms in 2020 at the behest of the court's Forms committee. These included (paraphrasing titles): Annual Financial Accounting, Annual Status Report, Inventory report, Request to Assign a Court Visitor, Order to Assign a Court Visitor, Motion to Review or Alter a Guardianship of an Adult/Minor, Motion to Terminate a Guardianship of an Adult/Minor, and Motion to Change Accounting Requirements.

These forms worked their way through the review process. The Forms committee gave final approval for all 10 forms at their meeting in February 2023. All forms were approved with minimal changes to the recommendations made by WINGS. They will be placed into circulation as soon as the final formatting is complete.

- Guardianship Forms Subgroup

This WINGS subgroup, formed at the request of the Forms committee, meets every other week to work on guardianship forms. The goal of the group is to make these forms more accessible and easier to understand, especially by parties who are not represented.

Forms that undergo substantial change will be circulated amongst WINGS members for additional input, while simpler forms or those with minimal updates will go straight to the Forms committee for approval. The first form the subgroup is tackling is the Petition to Appoint a Guardian for an Adult. (Group members include Leslie Francis, Sarah Box, Katie Cox, Holly Thorson, Keri Sargent, and Shonna Thomas.)

- Utah Code 75-5-303

WINGS made recommended language updates to this statute at the December meeting. These recommendations were passed onto the Legislative committee for review and possible inclusion in the 2023 Legislative Session. The Legislative committee did not think that these recommendations would make it into the current session but stated that they would put on their radar for next session.

The recommended changes were also shared with the Elder Law Section and Legislative Section of the Bar. It is unknown at this time if they intend to pursue this on their end, but Brant Christiansen will keep WINGS stakeholders updated if they do. Otherwise, this project will likely be deferred until the 2024 legislative session.

The delay in addressing the recommended changes may allow WINGS to spend more time reviewing the medical criteria and choice of attorney aspects of the statute and determine if additional clarifying language would be beneficial. (See New Topics below.)

WINGS Membership Updates

Long-Term Care Ombudsman

Nels Holmgren reached out to the new Long-Term Care Ombudsman, Alianne Sipes, with an invitation to WINGS. Nels reports that Alianne is interested and willing to participate in the WINGS committee.

Decisions Made

- Shonna will reach out to Alianne with information on attending the next WINGS meeting.

Successor Recommendations

Judge Kelly reached out to some fellow judges and has identified one judge with a particular interest in joining WINGS as a successor for Judge Connors, who is retiring.

Decisions Made

- Judge Kelly will ask the Judicial Council for additional information on nominating a judge during the WINGS annual report presentation on February 27, 2023.

Highlight: Guardianship Signature Program

The Guardianship Signature Program (GSP) is a joint program between the Utah State Bar and the Administrative Office of the Courts. It connects volunteer attorneys with respondents in guardianship cases who otherwise do not have an attorney of their own choosing, per Utah Code. The GSP has been in place for approximately 8 years, and it has always struggled to find enough volunteer attorneys to keep up with the number of cases where a respondent is not represented.

The Bar has introduced a new platform, called Paladin, that helps connect attorneys with pro bono opportunities across the state, to assist those attorneys in giving back and meeting their annual pro bono hours requirement. Paladin will allow the GSP to send requests for attorneys to a broader pool of volunteers and hopefully lead to an improved response rate over time. (Attorneys volunteering through the Paladin platform are still required to certify competency in guardianship law.)

Because the GSP relies on volunteers, it may continue to struggle. Other programs that utilize the services of volunteer attorneys have noted a shortage as well. WINGS may want to consider additional ways to fulfill the important requirement of independent counsel for respondents in guardianship cases.

Discussion

- One potential option is to look at testing a complementary program in the “sandbox” through the Office of Legal Service Innovation, using law students, paralegals, or other volunteers trained in guardianship law. One consideration would be whether the statutory language requiring an attorney could be overridden.
- One difficulty with volunteering for the GSP is that attorneys accept cases with minimal knowledge of the time commitment required. Cases could be straightforward and require their services for only a few days, while others can last months, through counter petitions, mediation, etc. It is a big ask of volunteer attorneys who must juggle this uncertainty with their other responsibilities.
- The GSP was created to provide independent counsel to the respondent and eliminate the petitioner / petitioner’s attorney finding counsel for the respondent, which carried with it the potential for collusion.
- Would it be helpful to add to the Request for an Attorney form a checkbox indicating that the respondent has the means to pay for legal representation? Or, when an individual requests a public defender, they have to fill out an affidavit declaring indigent circumstances. Could something similar be used in requests for attorneys through the GSP?
- It may be helpful to find a way to separate or identify cases where the respondent has the means to pay for the services of an attorney. Perhaps a copy of the petition be included in the Paladin opportunity, so that interested attorneys could judge for themselves what kind of case it might be and the potential for fees, before agreeing to take the case.
- The Public Defender’s office has a program and funding system in place that might be useful to try and mirror with the GSP.

- The private Guardian ad Litem program (GAL) might be the most similar and a program to look to for comparing the GSP and the types of improvements being discussed. In the GAL program there is a decision made whether the appointment will be pro bono or if there will be fees.
- Some attorneys might decide against charging fees simply to avoid accusations of padding time and services rendered. The GAL program may also have suggestions for how to handle accusations of padding services for fees.

Decisions Made

- The Executive Committee will follow up on this topic and look at a process to investigate ways to improve the program and increase participation.

New Topics

New Projects for 2023

Throughout the course of the meeting, WINGS members discussed several areas of guardianship where improvements could be made. Based on this discussion, some potential new projects for WINGS include:

- Revisions to Utah Code 75-5-303 – Medical criteria.
 - It may be helpful to have Dr. Lindsay Embree review the medical criteria in the statute (existing and the proposed revisions from WINGS) to provide feedback and insight.
 - WINGS may want to include in their revisions statutory language that could address medical situations or conditions that would, in all instances, reasonably excuse a respondent from a hearing without requiring a Court Visitor.
- Revisions to Utah Code 75-5-303 – Attorney choice.
 - The statute explicitly indicates that unless a respondent chooses an attorney, the court will appoint one. However, the statute does not define what is meant by “choice” and whether a petitioner can select an attorney to represent the respondent, which is common practice.
 - The statute also provides limited exceptions for when the requirement for an attorney can be waived- subsection (5)(d) - but does not provide recourse for situations where (a) the respondent is incapable of choosing an attorney, (b) one or more of the seven criteria listed in the subsection *cannot* be met, and (c) the court has been unable to appoint an attorney through the GSP.
 - Clarifying language could help ensure that the intent of the statute is clear and enhance the protection of the respondent in guardianship proceedings.
- Using the Clinical Evaluation form.
 - Clinicians can get dinged by Medicare if they are doing a lot of court-ordered paperwork. Medicare may argue that what is being asked is a legal question, not a medical question, which would require a different type of reimbursement.
 - It is also important to ensure that medical complications or functional limitations do not assume that a person has lost all cognitive and decision-making ability.
 - There is a need to differentiate the information found in the clinical evaluation form that speaks to the person’s capacity, and the requirement in 75-5-303(5)(b), which addresses the person’s ability to attend and participate in the hearing.

- Data collection and case lookup.
 - Because of the way court cases are searchable, agencies that conduct investigations or reviews of parties that may overlap with guardianship cases are at a disadvantage in being able to see the big picture of what might be going on. Some questions asked by stakeholders include:
 - Is there a way to look at how many cases or protected persons does a particular individual have guardianship over?
 - Is there a way to determine the number of cases where a Court Visitor has been assigned that overlap with cases under review by the Medicaid Fraud Control Unit (MFCU) or Adult Protective Services (APS)?
 - If a guardian is convicted by MFCU or APS, is there a mechanism that would alert the court if this individual were also serving as guardian on other cases?
 - Some allegations have been brought forth regarding pairs of attorneys and possible collusion or unethical behavior. Is there a way to search cases for attorney pairs, and would that be possible even if an attorney has since withdrawn from a case?
 - Being able to gather relevant data and obtain a more accurate facts related to a situation would help agencies better protect vulnerable individuals such as those under guardianship or conservatorship.
 - Other entities have mechanisms that make public these type of situations (e.g., National Practitioner Databank, disbarred or sanctioned attorneys), but there does not appear to be anything in place for guardians or conservators convicted in cases against vulnerable individuals.
 - Guardianship cases are private, which complicates the data collection and dissemination process. However, it may be possible to find a work around for specific inquiries. The Court uses CORIS as its case management system. Requests can be made to modify or enhance aspects of CORIS to provide better data collection and dissemination in guardianship cases. If WINGS members have suggestions or thoughts for CORIS enhancements, reach out to Shonna or Keri Sargent.
- Guardianship standards and education.
 - Reviewing the National Guardianship Association standards would be a beneficial project to help identify gaps between the standards and the court forms, websites, and practices. There seems to be confusion amongst judges, attorneys, and guardians particularly regarding decision-making standards.
 - Improved education for guardians, parties, and judges would be beneficial.
 - Education pieces for guardians could include reviewing the guardianship manual given to new/proposed guardians and revamping the guardianship exam.
 - Education pieces for judges could include creating training that emphasizes the preference for limited guardianships via the bench book, bench card, checklists, and forms, and clarifying what sanctions judges can impose, and how they enact those sanctions, when a guardian is not compliant with their guardianship responsibilities.

Decisions Made

- The Executive Committee will follow up on these new project suggestions and discuss a plan for addressing them.

<p>Annual Planning Meetings</p> <ul style="list-style-type: none"> • Deferred to a future WINGS meeting.
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<p>Other Business</p> <p>Farewell to Judge Connors</p> <p>Judge Connors has been instrumental in WINGS over the years and WINGS has been fortunate to have him as a member. His interest, willingness to serve, and effectiveness in being able to address guardianship issues has been extremely valuable to the committee, the court, and the community. WINGS thanks Judge Connors for his service and recognizes the impact he has made in advancing guardianship improvements.</p>

Action Items	
<p>CJA Rule 6-501</p> <ul style="list-style-type: none"> – Research what is needed to provide an RTF version of the Order on Review on the court’s website. 	<p>Sarah Box Keri Sargent</p>
<p>Long-Term Care Ombudsman</p> <ul style="list-style-type: none"> – Reach out to Alianne Sipes with information on attending the meeting in April. 	<p>Shonna Thomas</p>
<p>Successor Recommendations</p> <ul style="list-style-type: none"> – Seek additional information from the Judicial Council on the process to nominate and appoint a judge to the WINGS committee. 	<p>Judge Kelly</p>

Deferred / Continuing Items
<ul style="list-style-type: none"> – Project updates: Rule 6-501, Rule 6-507, and guardianship form revisions – WINGS membership process – Utah Code 75-5-303 – New WINGS projects – Annual WINGS planning meetings

<p>Next Meeting(s):</p>	<p>April 20, 2023 June 15, 2023 August 17, 2023 October 19, 2023 December 21, 2023</p>
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